

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:08CV103-03-MU

PHILLIP L. SMALL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CATAWBA VALLEY MEDICAL )  
CENTER; DR. RONALD N. LOCKE )  
 )  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed July 25, 2008.<sup>1</sup> (Document No. 1. )

In his Complaint against the Catawba Valley Medical Center and Dr. Ronald V. Locke, Plaintiff contends that he was admitted to the Catawba Valley Medical Center on January 6, 2008 for a hernia operation and was released on January 11, 2006. "Dr. Locke put holes in [his] intestin" [sic] causing Plaintiff to have a colostomy bag for seven months. Plaintiff contends that he is disfigured as a result of the surgery. (Complaint at 4.) By way of relief Plaintiff asks "that the state [] fix [his] stomek [sic] and [that he be] payed [sic] for the pain [he is] going throw [sic]." (Complaint at 5.)

Taking the allegations in Plaintiff's Complaint as true, such allegations do not state a claim for relief pursuant to 42 U.S.C. § 1983. At most, Plaintiff's Complaint states a claim under state law for negligence or medical malpractice. However, neither negligence nor malpractice state a

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<sup>1</sup> Plaintiff's Complaint was initially filed in the Eastern District of North Carolina and was transferred to this Court on September 8, 2008.

constitutional claim. Estelle v. Gamble, 429 U.S. 97, 105-06 (1976); Johnson v. Quinones, 145 F.3d 164, 168 (4<sup>th</sup> Cir. 1998). Therefore, Plaintiff's Complaint is dismissed for failure to state a claim for relief.

**ORDER**

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Complaint is Dismissed for failure to state a claim for relief.

**SO ORDERED.**

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Signed: September 9, 2008



Graham C. Mullen  
United States District Judge

